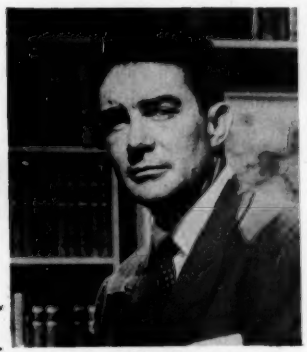
THE
Dan Smoot Report

Vol. 4, No. 11 | Monday, March 17, 1958 | Dallas, Texas



DAN SMOOT

Jenner's Bill to Curb the Court

In August, 1957, Senator William E. Jenner (Republican, Indiana) introduced a bill (S. 2646) to limit the appellate jurisdiction of the United States Supreme Court.

The bill would withdraw jurisdiction from the Court in five fields.

1. The investigative functions of Congress: need for this provision is illustrated by the Watkins case, in which the Supreme Court crippled the investigative powers of Congress, particularly in communist matters.

2. The security program of the federal government: need for this provision grew out of several Court decisions, which had the effect of nullifying the Internal Security Act of 1950, making it impossible for the government even to require the communist party to register as a foreign-dominated subversive organization, and making the removal of communists from federal jobs prohibitively difficult.

3. State anti-subversive legislation: this provision grew out of the Court's Nelson Case decision which makes it impossible for state governments to prosecute communists.

4. Home rule over local schools, in subversive activities matters: this provision grew, primarily, out of the Slochower case in which the Supreme Court made it impossible for a school board to fire fifth-amendment communists.

5. Admissions of persons to the practice of law within individual states: need for this provision is illustrated by the Konigsberg and Schware cases in which the Supreme Court presumed to tell state governments that they can not deny communist lawyers admission to the bar.

The Internal Security Subcommittee began hearings on the Jenner Bill on February 20, 1958, with instructions to report on the measure to the full Senate Judiciary Committee by March 10.

It was foreseen that both the subcommittee and the full Judiciary committee would report the bill favorably, because Senator James O. Eastland — who favors the legislation — is chairman of both.

THE DAN SMOOT REPORT, a magazine edited and published weekly by Dan Smoot, mailing address P. O. Box 1305, Dallas, Texas, Telephone TAylor 4-8683 (Office Address 6441 Gaston Avenue). Subscription rates: $10.00 a year, $6.00 for 6 months, $3.00 for 3 months, $18.00 for two years. For first class mail $12.00 a year; by airmail (including APO and FPO) $14.00 a year. Reprints of specific issues: 1 copy for 25¢; 6 for $1.00; 50 for $5.50; 100 for $10.00 — each price for bulk mailing to one person.

The real fight will come on the floor of the Senate, where a vote is expected before the end of March.

* * * *

The Bill Itself

Here are the essential portions of the Jenner Bill, S.2646:

The Supreme Court shall have no jurisdiction to review, either by appeal, writ of certiorari, or otherwise, any case where there is drawn into question the validity of —

(1) any function or practice of, or the jurisdiction of, any committee or subcommittee of the United States Congress, or any action or proceeding against a witness charged with contempt of Congress;

(2) any action, function, or practice of, or the jurisdiction of, any officer or agency of the executive branch of the Federal Government in the administration of any program established pursuant to an Act of Congress or otherwise for the elimination from service as employees in the executive branch of individuals whose retention may impair the security of the United States Government;

(3) any statute or executive regulation of any State the general purpose of which is to control subversive activities within such State;

(4) any rule, bylaw, or regulation adopted by a school board, board of education, board of trustees, or similar body, concerning subversive activities in its teaching body; and

(5) any law, rule, or regulation of any State, or of any board of bar examiners, or similar body, or of any action or proceeding taken pursuant to any such law, rule, or regulation pertaining to the admission of persons to the practice of law within such State.

* * * *

Evaluation of the Bill

I do not think the Jenner Bill goes far enough. I believe the Congress could, and should, impeach the Supreme Court for unconstitutional usurpation of power.

My specific objection to the Jenner Bill is that it does not keep the Supreme Court from operating unconstitutionally in the one area where it has done the most damage: the area involving state laws on racial segregation. And the Bill does not correct such evils as those resulting from the Mallory Case decision (see p. 3 below).

Nonetheless, the Jenner Bill is fine as far as it goes; and it is the only bill to curb the Court which has any chance of serious consideration.

Hence, I think the Bill should have the all-out support of all patriots.

* * * *

Alignment of Forces

All communistic and extreme left-wing organizations and a multitude of tail-wagging outfits which profess dedication to sweetness and light, but which can always be found out in left field licking the communists' hands, are fighting the Jenner Bill. And, of course, the Eisenhower administration is fighting it.

All patriots — who have watched with agony and anguish while the Supreme Court has converted itself into despotic oligarchy under the control of alien and subversive forces — are on the other side, working for the Jenner Bill.

The outcome of the Jenner Bill will be a fairly good indication of the effectiveness of these two opposite forces in American life.

Will the pro-communists and leftwingers kill the Jenner Bill, or will patriots succeed in getting it passed?

The Senate vote will be determined largely by the pressures which the public exerts.

* * * *

What to Do?

Every patriot in the United States should, as an individual, do his utmost to see that both United States Senators from his state are bombarded with letters and telegrams demanding passage of S. 2646, the Jenner Bill to limit the appellate jurisdiction of the Supreme Court.

* * * *

Jenner Speaks For His Bill

This article consists of extracts from a speech which Senator Jenner made on August 7, 1957, in support of his Senate Bill 2646.

Space limitations compelled me to leave out more than half of the speech, and to re-arrange some material in order to eliminate duplication. But the following is Senator Jenner's language and meaning — and it is the essence of his argument for his own bill.

The extreme liberal wing of the Supreme Court has become a majority; and we witness

today the spectacle of a Court constantly changing the law, and even changing the meaning of the Constitution, in an apparent determination to make the law of the land what the Court thinks it should be.

Let's consider the Court's 1957 decision changing the established law of wills and trusteeships.

Stephen Girard died in 1831. He left most of his estate to a perpetual trust, to set up and maintain a school for poor, white, orphan boys between the ages of 6 and 10.

The mayor, aldermen, and city of Philadelphia were named as trustees. Since 1870, the will has been administered by the board of directors of city trusts.

Recently, an attempt was made to require the orphanage to accept negroes. The Pennsylvania courts held that this was impossible, since Girard had expressly stated that his money was to be used only for poor white orphan boys. Attorneys for the negroes asked the United States Supreme Court for a writ of certiorari. Attorneys for the trust opposed the writ.

There was no argument whatever on the merits of this case. Nevertheless, the Court took jurisdiction on the merits and in a five and half line *per curiam* opinion reversed the decision of the Pennsylvania Supreme Court.

Attorneys for the trust filed a brief, saying:

"Appellee has in effect been silenced before it could utter a word or submit an argument in defense of the conclusion reached by the judges of the supreme court of Pennsylvania and of one of the Commonwealth's finest lower courts.

"The State courts decided the matter only after all sides of the question had been presented in full. This court has reversed the judgment of the highest court of Pennsylvania, without permitting it to be defended, on issues which, it is submitted, are of the utmost significance. Appellee cannot find a single precedent for such a result.

"Appellee believes that in the history of this court it is the first party to have had its case reversed without a hearing on the basis of a new approach to fundamental constitutional law.

"If it is a denial of equal protection of the laws for a trustee to make available to a Negro the property in trust for whites, it is just as much a denial of equal protection of the laws for the same trustee to refuse to make available to a Methodist property in trust for Catholics. If 2 Negro boys have standing to sue in order to claim the facilities of a trust for white boys, then 2 Methodist boys have standing to sue to claim the facilities of a trust for Catholic boys, or 2 gentiles have standing to recover the proceeds of a trust for Jews."

In the face of all this, the Supreme Court of the United States curtly refused the appellees' plea to be heard. The decision stands.

Let us now consider what the Court has done to make things easier for the criminal.

In Washington, D.C., on April 7, 1954, Andrew R. Mallory raped a woman who was trying to do the family washing in the cellar of her apartment house. Mallory was convicted. His conviction was upheld in the court of appeals.

The conviction was reversed and remanded by the United States Supreme Court, in an unanimous opinion written by Mr. Justice Frankfurter, which referred tenderly to this rapist as a "19-year-old lad." The Court did not find Mallory innocent. It did not suggest there was any doubt about his guilt. The Court simply made a new rule, denying police the right to question a suspect before arraignment. There was no question of "third degree" here. Nobody charged the police with getting rough with this self-confessed rapist.

Mallory walked out of jail a free man, who may commit yet another rape in yet another cellar if it suits his fancy. The Court had ordered a new trial, but the Court must have known, as United States Attorney Gasch pointed out in dismissing the case, that the wording of the Supreme Court's opinion made it practically impossible to prepare the case for retrial with any reasonable hope of conviction.

Assistant Attorney General Warren Olney, Chief of the Justice Department's Criminal Division, stated that the Mallory decision

"clearly demonstrates that a great many very serious crimes will go unpunished . . . not because the truth cannot be ascertained, but because of the procedures that have to be followed to develop the facts . . .

"The Court is supposed to have its judgment rest on the best truth it can get but the Court will not listen to the truth."

Let me read those words again: the Supreme Court of the United States "will not listen to the truth."

The Mallory decision means that a suspect cannot be questioned *before his arrest* unless he agrees. If he is arrested, he cannot be questioned at all.

Chief Murray (Chief of Police, Washington, D.C.) cited the rape-murder of an 8-year-old girl which his Department was working on, but which the police can now do virtually nothing about, because of the effect of the Supreme Court's Mallory Case decision.

How many more 8-year-old girls will be raped, because the United States Supreme Court will not listen to the truth?

Now, let's get to the matter of what the Warren Court has done to confuse, disarm and paralyze Americans in their fight to defend themselves against the world communist conspiracy.

In 1956, the Court decided the case of *Nelson v. Pennsylvania.* The Court told the sovereign States that even though they themselves might be in danger of being overthrown by the communist conspiracy, they might not act, because, said the Court, Congress had "preempted" the field.

On April 9, 1956, 1 week later, we had to recoil in our deliberations when the Supreme Court, in the Slochower case, drew the circle even tighter and held that municipal authorities could not take action to get rid of communist professors. New York City had to reinstate some of these teachers with back pay; and Professor Slochower himself drew an indemnity of $40,000 because of this arbitrary and erroneous decision of the Supreme Court.

In its decision, the Court put forth a conclusion not supported by the record. Not only was it not supported by the record, but the corporation counsel of the City of New York irrefutably showed that the very opposite conclusion was the fact. But the Supreme Court was unmoved.

Then on April 30th of 1956, having demolished the legislative power of the States in the field of subversion by its decision in the Nelson case, and having crippled the power of the municipalities to rid themselves of subversive employees by its decision in the Slochower case, the Supreme Court completed the circle by dealing a devastating blow to the efforts of the executive branch of the Federal Government — in the case of the *Communist Party v. The Subversive Activities Control Board.*

Six years earlier, after years of serious analysis and study, Congress had passed the Internal Security Act of 1950. One of the most elementary aspects of that act was that if organizations are subversive, they must register and come under the sanctions of the law.

Shortly after the enactment of the Internal Security Act, the communist party refused to register. In hearings before the Subversive Activities Control Board, which took years, the Justice Department put into the record tons of evidence to legally prove the party subversive. Then the Supreme Court rules that, because the communists charged that testimony of three of the hundreds of sources of evidence were tainted, the case must go back for reassessment.

Let's look at the decision in the Jencks case. Clinton Jencks was a communist official of the communist-dominated Mine, Mill, and Smelter Workers Union. He was convicted of falsely swearing on a Taft-Hartley affidavit that he was not a member of the party.

In his trial, it had been shown that some of the witnesses against him were Government undercover men, who reported to the FBI on communist activities. Counsel for Jencks asked that the FBI produce confidential reports of these agents so the Court could examine them to see if they might be useful to the defense in

cross-examining the witnesses. The trial judge denied this request and the court of appeals upheld the judge. But the Supreme Court went even further than Jencks attorneys themselves had gone in their request. The Court said, in effect, Jencks could paw through FBI files to his own satisfaction, without any interference from a judge.

The court also said, in effect:

We can trust Communists. We can trust criminals. But we cannot trust the trial judges of our own Federal bench.

Let's consider the case of the 14 California Communists, otherwise known as *Yates et al v. U. S.*

They were convicted of violating the Smith Antisedition Act.

The Court majority, through Justice Harlan, substituted itself for the jury and ordered 5 of the defendants acquitted on the facts; and decreed new trials for the 9 others. Justices Black and Douglas said they should all go free.

The Harlan opinion suffocates the reader with layer upon layer of soft, cobwebby words.

When the layers are brushed aside, this appears to be the meaning of the Court:

It is perfectly legal to advocate and teach and conspire with others for the overthrow of the Government of the United States by force and violence, so long as none of you does a violent act and the future date of the revolution is not fixed and thus remains "indefinite." And it is all right to seek to incite others to specific violence against the Government, as long as you don't succeed in getting them to do anything violent.

In other words, only successful revolutionists can be punished.

In the Watkins case, the Court struck a devastating blow at the power of Congress to inform itself.

The Federal Government employs about 2½ million persons. The annual budget totals about 70 billion. But there are only 96 Senators.

The Federal establishment has engulfed the Congress, to the mortal danger of our Government's constitutional balance.

It is physically impossible for members of Congress to keep currently informed about the other branches of Government.

To turn back the tide of engulfment, Congress uses investigating committees, staffed by professional personnel. Investigating committees also are used to study facts as a basis for legislative activity.

In the Watkins case, the Supreme Court has dealt this committee function a body blow by making it possible for reluctant witnesses to stop an investigation in its tracks.

Watkins appeared as a witness before the House Committee on Un-American Activities. The committee was investigating communist infiltration in labor unions. Two persons had stated under oath that Watkins, a labor union official, had helped to recruit them into the communist party.

Watkins denied that he had ever been "a card-carrying member of the Communist Party." He acknowledged, however, that he "freely cooperated" with the party. He identified some persons as communists. But he refused to give identifications regarding certain others. He did not plead the fifth amendment as a basis for this refusal.

He simply challenged the committee's jurisdiction, saying:

"I refuse to answer certain questions that I believe are outside the proper scope of your activity."

As a result of this refusal he was found guilty of contempt of Congress. The full bench of the court of appeals affirmed the conviction. The Supreme Court set it aside, in an opinion written by the Chief Justice.

The Chief Justice attempted to justify the new judge-made law with an important misstatement of fact.

Purporting to give a review of the congressional investigating function, he said:

"In the decade following World War II, there appeared a new kind of congressional inquiry unknown in prior periods of American history. Principally this was the result of the various investigations into the threat of subversion of the United States Government, but other subjects of congressional interest also contributed to the changed scene. This new phase of legislative inquiry involves a broad-scale intrusion into the lives and affairs of private citizens."

This is a false statement. The entire Franklin Roosevelt era was awash with investigations constituting intrusion into the lives and affairs of private citizens.

There was an investigation in which bankers and businessmen were required to tell how much they had paid in personal income taxes.

There was an investigation which made searching personal inquiries into American industries, under the pretext that it was examining the munitions traffic. The counsel in this instance was Alger Hiss, who nosed his way among America's industrial secrets as an agent for the Soviet underground.

There was a ruthlessly brutal investigation by the LaFollette Civil Liberties Committee, which made a mockery of justice in its effort to discredit American employers as a class. Counsel for this body was John Abt, who with Hiss, Lee Pressman, Nathan Witt, and others, had helped establish the original communist underground in our Government.

There was an investigation whose chairman "ordered the Postal Telegraph and Western Union companies to comb their files for all wires which smacked of high-pressure lobbying methods and . . . subpoenaed the complete telegraphic correspondence of more than 1,000 specified persons and groups." The "bag" for this broadscale intrusion into the lives and affairs of private citizens totaled 5 million telegrams. The man who seized them was a Senator named Hugo L. Black. A few weeks ago, as a Supreme Court Justice, Hugo Black joined Chief Justice Warren in deploring the tendency of committees to intrude into private matters by asking Americans if they were part of a treasonous conspiracy.

The Watkins decision holds that a committee must explain the pertinency of a question to the witness' satisfaction, before the witness may be required to answer it.

Any witness, anytime, can switch any investigation onto a siding by telling his interrogator, as Watkins did, that the question is not "relevant," or by the simple device of playing dumb and claiming not to understand why a question is pertinent.

On one of the last Red Mondays of the 1957 term, the Court laid more bricks on the evil foundations it had laid in the Watkins case, setting aside the contempt convictions of Harry Sacher — and several others.

Harry Sacher was chief of that notorious group of communist hecklers-at-the-bar who spent so many months trying to break the spirit of Judge Medina and thus create a mistrial in the Smith Act prosecution of 11 top communist leaders. The Supreme Court's action in setting aside Sacher's conviction for contempt of the Senate Subcommittee on Internal Security amounts to an insult to the Senate.

Sacher's contempt was calculated, cold blooded, and delivered with a maximum of Marxist insolence.

Let me read some passages from the subcommittee record:

"MR. SOURWINE: Are you, Mr. Sacher, a member of the communist party, USA?

"MR. SACHER: I refuse categorically, Mr. Chairman, to discuss my beliefs — religious, political, economic, or social. I do not do so on the ground of the fifth amendment. I do so because it is inconsistent with the dignity of any man to be compelled to disclose his political, religious, economic, social, or any other views. And I respectfully submit that an inquiry to me concerning this matter is not pertinent to anything with which this committee is concerned, and is not relevant to any inquiry that may properly be made of me. And I therefore decline on the ground that I cannot with any regard for my own self-respect, do otherwise, Mr. Chairman.

"Senator McCLELLAN. Well, the Chair does not think that it is beneath the dignity of a good citizen of the United States to answer a question as to whether he is a member of an organization that seeks the overthrow of this Government by force and violence, and therefore the Chair propounds to you now the question: Are you now a member of the Communist Party of the United States?

"Mr. SACHER. Mr. Chairman, medieval inquisitors also thought there was not impropriety in making those whom they regarded as heretics to answer the question.

"Senator McCLELLAN. The Chair does not care for a lecture. The Chair asked you a question.

"Mr. SACHER. And I decline to answer that question, Mr. Chairman.

"Senator McCLELLAN. The Chair orders you to answer the question.

"Mr. SACHER. I decline to answer that question on the grounds I have already stated.

"Senator McCLELLAN. The Chair asks you another question: Have you ever been a member of the Communist Party of the United States?

"Mr. SACHER. I respectfully submit, Mr. Chairman, that my conscience dictates to me that I shall not, under your compulsion or anybody else's compulsion, make any disclosure of any of my beliefs — political, religious, economic, or social — past or present, and I decline to answer your question."

And the Supreme Court of the United States reached down and gave Sacher a pat on the back, by a *per curiam* decision which did not refer to a word of the record I have just read!

Now we come to the matter of *Raphael Konigsberg v. The State Bar of California and the Committee of Bar Examiners of the State Bar.*

Konigsberg was for years a communist hack of the shabbiest type.

Despite his unspeakable record, Konigsberg had the gall to apply for admission to the California bar. He appeared before the committee of bar examiners, which was required to make an affirmative finding that he was a person of good moral character before it would recommend his admission.

In plain decency and common sense, the committee refused to certify Konigsberg as a person of good moral character. The State Supreme Court upheld the committee. Konigsberg took his case before the Supreme Court of the United States, which reversed the California findings.

Justice Black wrote the opinion, saying:

"It is difficult to comprehend why the State bar committee rejected a man of Konigsberg's background and character as morally unfit to practice law. As we said before, the mere fact of Konigsberg's past membership in the Communist Party, if true, without anything more, is not an adequate basis for concluding that he is disloyal or a person of bad character."

Mere membership in a continuing world conspiracy which has sought the destruction

WHO IS DAN SMOOT?

Dan Smoot was born in Missouri. Reared in Texas, he attended SMU in Dallas, taking BA and MA degrees from that university in 1938 and 1940.

In 1941, he joined the faculty at Harvard as a Teaching Fellow in English, doing graduate work for the degree of Doctor of Philosophy in the field of American Civilization.

In 1942, he took leave of absence from Harvard in order to join the FBI. At the close of the war, he stayed in the FBI, rather than return to Harvard.

He served as an FBI Agent in all parts of the nation, handling all kinds of assignments. But for three and a half years, he worked exclusively on communist investigations in the industrial midwest. For two years following that, he was on FBI headquarters staff in Washington, as an Administrative Assistant to J. Edgar Hoover.

After nine and a half years in the FBI, Smoot resigned to help start the Facts Forum movement in Dallas. As the radio and television commentator for Facts Forum, Smoot, for almost four years spoke to a national audience giving both sides of great controversial issues.

In July, 1955, he resigned and started his own independent program, in order to give only one side — the side that uses fundamental American principles as a yardstick for measuring all important issues. Smoot now has no support from, or connections with, any other person or organization. His program is financed entirely from sales of his weekly publication, *The Dan Smoot Report.*

If you believe that Dan Smoot is providing effective tools for those who want to think and talk and write on the side of freedom, you can help immensely by subscribing, and encouraging others to subscribe, to *The Dan Smoot Report.*

of the United States for nearly 40 years is no blemish on the character of a man who wants to practice law in the courts of the United States! That is what our highest tribunal has told us, in the plainest words.

What a spectacle we must appear to the world! Every peasant in China, every worker in Singapore, every farmer in Europe knows that the communist party seeks to overthrow not only the United States Government but every remaining free government of the world. The executive branch of our own Government has spent years proving these very obvious conclusions, and then the Supreme Court tells us this!

What a travesty!

Reasonable men may err. If the Court had erred only once or twice in these decisions involving the greatest threat to human freedom which history ever had to look upon, reasonable men could find excuses for it. But what shall we say of this parade of decisions that come down from our highest bench on Red Monday after Red Monday?

David Lawrence, in *U. S. News & World Report,* called this body of heedless, twisted, dishonest, pro-communist "law," treason's biggest victory.

That is what it is. That is why we in Congress must fulfill our plain duty and act immediately in the way the Constitution empowers us to act, to repair as much of the damage as we can and prevent even worse damage in the future.

Section 2, paragraph 2, in article 3, of the Constitution of the United States says:

"The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

Those words are hard, firm, and clear as crystal. They could not be diverted, inverted, or subverted even by the double-think and new-speak of a Harvard Law School dean.

* * * *

The Power and the Duty

Clearly, as Senator Jenner shows, the Congress has full constitutional power to limit the jurisdiction of the Supreme Court.

It also has a solemn duty to do so, since all Congressmen and Senators are sworn to uphold the Constitution of the United States.

The American people have the power to command Congress to enact the Jenner Bill — and they have a solemn duty to do so, if they value freedom.

If you do not keep a permanent file of *The Dan Smoot Report,* please mail this copy to a friend who is interested in sound government.

DAN SMOOT,
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